

**Introduced by Senator Poochigian**February 17, 2005

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An act to amend Sections 1800, 1800.5, 1801, and 1801.5 of the Welfare and Institutions Code, relating to juvenile offenders, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 447, as introduced, Poochigian. Youth authority.

Existing law requires the Director of the Youth Authority to request the prosecuting attorney to petition the committing court for an order seeking the extended detention of certain persons who would otherwise be discharged from the Youth Authority if the Department of the Youth Authority if the department determines that those persons would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality.

This bill would limit the application of those sections to persons who are physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality which causes them to have serious difficulty controlling their dangerous behavior.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1800 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 1800. Whenever the Department of the Youth Authority
- 4 determines that the discharge of a person from the control of the

1 department at the time required by Section 1766, 1769, 1770,  
2 1770.1, or 1771, as applicable, would be physically dangerous to  
3 the public because of the person's mental or physical deficiency,  
4 disorder, or abnormality *which causes the person to have serious*  
5 *difficulty controlling his or her dangerous behavior*, the  
6 department, through its director, shall request the prosecuting  
7 attorney to petition the committing court for an order directing  
8 that the person remain subject to the control of the authority  
9 beyond that time. The petition shall be filed at least 90 days  
10 before the time of discharge otherwise required. The petition  
11 shall be accompanied by a written statement of the facts upon  
12 which the department bases its opinion that discharge from  
13 control of the department at the time stated would be physically  
14 dangerous to the public, but the petition may not be dismissed  
15 and an order may not be denied merely because of technical  
16 defects in the application.

17 The prosecuting attorney shall promptly notify the Department  
18 of the Youth Authority of a decision not to file a petition.

19 SEC. 2. Section 1800.5 of the Welfare and Institutions Code  
20 is amended to read:

21 1800.5. Notwithstanding any other provision of law, the  
22 Youth Authority Board may request the Director of the Youth  
23 Authority to review any case where the department has not made  
24 a request to the prosecuting attorney pursuant to Section 1800  
25 and the board finds that the ward would be physically dangerous  
26 to the public because of the ward's mental or physical deficiency,  
27 disorder, or abnormality *which causes the person to have serious*  
28 *difficulty controlling his or her dangerous behavior*. Upon the  
29 board's request, a mental health professional designated by the  
30 director shall review the case and thereafter may affirm the  
31 finding or order additional assessment of the ward. If, after  
32 review, the mental health designee affirms the initial finding,  
33 concludes that a subsequent assessment does not demonstrate  
34 that a ward is subject to extended detention pursuant to Section  
35 1800, or fails to respond to a request from the board within the  
36 timeframe mandated by this section, the board thereafter may  
37 request the prosecuting attorney to petition the committing court  
38 for an order directing that the person remain subject to the  
39 control of the authority pursuant to Section 1800 if the board  
40 continues to find that the ward would be physically dangerous to

1 the public because of the ward's mental or physical deficiency,  
2 disorder, or abnormality *which causes the person to have serious*  
3 *difficulty controlling his or her dangerous behavior*. The board's  
4 request to the prosecuting attorney shall be accompanied by a  
5 copy of the ward's file and any documentation upon which the  
6 board bases its opinion, and shall include any documentation of  
7 the department's review and recommendations made pursuant to  
8 this section. Any request for review pursuant to this section shall  
9 be submitted to the director not less than 120 days before the date  
10 of final discharge, and the review shall be completed and  
11 transmitted to the board not more than 15 days after the request  
12 has been received.

13 SEC. 3. Section 1801 of the Welfare and Institutions Code is  
14 amended to read:

15 1801. (a) If a petition is filed with the court for an order as  
16 provided in Section 1800 and, upon review, the court determines  
17 that the petition, on its face, supports a finding of probable cause,  
18 the court shall order that a hearing be held pursuant to  
19 subdivision (b). The court shall notify the person whose liberty is  
20 involved and, if the person is a minor, his or her parent or  
21 guardian (if that person can be reached, and, if not, the court shall  
22 appoint a person to act in the place of the parent or guardian) of  
23 the hearing, and shall afford the person an opportunity to appear  
24 at the hearing with the aid of counsel and the right to  
25 cross-examine experts or other witnesses upon whose  
26 information, opinion, or testimony the petition is based. The  
27 court shall inform the person named in the petition of his or her  
28 right of process to compel attendance of relevant witnesses and  
29 the production of relevant evidence. When the person is unable to  
30 provide his or her own counsel, the court shall appoint counsel to  
31 represent him or her.

32 The probable cause hearing shall be held within 10 calendar  
33 days after the date the order is issued pursuant to this subdivision  
34 unless the person named in the petition waives this time.

35 (b) At the probable cause hearing, the court shall receive  
36 evidence and determine whether there is probable cause to  
37 believe that discharge of the person would be physically  
38 dangerous to the public because of his or her mental or physical  
39 deficiency, disorder, or abnormality *which causes the person to*  
40 *have serious difficulty controlling his or her dangerous behavior*.

1 If the court determines there is not probable cause, the court shall  
2 dismiss the petition and the person shall be discharged from the  
3 control of the authority at the time required by Section 1766,  
4 1769, 1770, 1770.1, or 1771, as applicable. If the court  
5 determines there is probable cause, the court shall order that a  
6 trial be conducted to determine whether the person is physically  
7 dangerous to the public because of his or her mental or physical  
8 deficiency, disorder, or abnormality.

9 SEC. 4. Section 1801.5 of the Welfare and Institutions Code  
10 is amended to read:

11 1801.5. If a trial is ordered pursuant to Section 1801, the trial  
12 shall be by jury unless the right to a jury trial is personally  
13 waived by the person, after he or she has been fully advised of  
14 the constitutional rights being waived, and by the prosecuting  
15 attorney, in which case trial shall be by the court. If the jury is  
16 not waived, the court shall cause a jury to be summoned and to  
17 be in attendance at a date stated, not less than four days nor more  
18 than 30 days from the date of the order for trial, unless the person  
19 named in the petition waives time. The court shall submit to the  
20 jury, or, at a court trial, the court shall answer, the question: Is  
21 the person physically dangerous to the public because of his or  
22 her mental or physical deficiency, disorder, or abnormality *which*  
23 *causes the person to have serious difficulty controlling his or her*  
24 *dangerous behavior*? The court's previous order entered pursuant  
25 to Section 1801 shall not be read to the jury, nor alluded to in the  
26 trial. The person shall be entitled to all rights guaranteed under  
27 the federal and state constitutions in criminal proceedings. A  
28 unanimous jury verdict shall be required in any jury trial. As to  
29 either a court or a jury trial, the standard of proof shall be that of  
30 proof beyond a reasonable doubt.

31 SEC. 5. This act is an urgency statute necessary for the  
32 immediate preservation of the public peace, health, or safety  
33 within the meaning of Article IV of the Constitution and shall go  
34 into immediate effect. The facts constituting the necessity are:

35 In order to ensure, as soon as possible, the constitutional  
36 validity of future commitments made pursuant to these  
37 provisions, it is necessary that this act take effect immediately.

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